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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,140	07/23/2003	Robert Kornacki	758-001	8282

7590 09/28/2004

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,140

Applicant(s)

KORNACKI, ROBERT

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is the second office action for application number 10/625,140, Blanket Anchor, filed on July 23, 2003.

Cancellation of Claims

Claim 2 has been canceled in correspondence dated July 13, 2004.

Claim Objections

Claim 3 is objected to because of the following informality: the first recitation of "member" in line 3 of the claim should be --portion--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,176,354 to Feigenbaum, Jr. in view of U.S. Patent 4,914,767 to Balicki et al., hereinafter Balicki. Feigenbaum discloses an anchor member (10) for anchoring a blanket (74) or towel at the beach or at a picnic in an open spread orientation, the anchor member comprising: a stake portion (14) having a lower end and an upper end (12), the lower end being tapered (Col. 5, line 21ff) for facilitating insertion into the ground, the upper end being of a rounded configuration, the upper end having extending horizontally therefrom, a biased clamping means (28), the biased clamping means comprising a first jaw member (50) integral with the stake portion and a second jaw member (30) and a biasing means (34, 36) disposed

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therebetween, the first jaw member being permanently secured to the upper end of the stake member, the second jaw member being movable in bias relationship to the first jaw member, the second jaw member having a serrated surface (32) juxtaposed to the surface of the first jaw member, each surface for engagement of an edge of the blanket or towel, the serrated surface of the second jaw member having a predetermined width; wherein the second jaw member independent of the stake portion is provided with a handle member (48) for movement of the second jaw member by means of the biasing means relative to the opposing first jaw member; and wherein a plurality of the anchor members would be positioned about the periphery of the blanket or towel, engaging the edge of the blanket or towel for maintaining the blanket or towel in a desired orientation.

Feigenbaum discloses the claimed invention except for the limitations of the first jaw member having a serrated surface and the serrated surface of the jaw member having a width wider than the stake portion of the anchor member. Balicki teaches an anchor member having a first jaw member (8) biased to a second jaw member (9) and wherein the jaw members each have serrated surfaces, and wherein the serrated surfaces of the first and second jaw members are wider than the stake portion (6) of the anchor member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the first jaw member in Feigenbaum to have included a serrated surface as taught by Balicki for the purpose of providing a more secured means for gripping the edges of the blanket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the width of the serrated surfaces in Feigenbaum to have been wider than the stake portion as taught by Balicki for the purpose of providing a means to

clamp more area of the blanket and since such a modification would merely involve a change in size.

Response to Arguments

Applicant's arguments filed July 13, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the first jaw member in Feigenbaum is affixed to the under side of the head portion, the first jaw member (50) in Feigenbaum is attached to the undersurface of the head portion (12) and thus, is integral with the head portion of the stake portion. The term "integral" is interpreted broadly, meaning it is sufficient to embrace constructs united by a fastening means; the term is not restricted to one-piece articles.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the head of the stake being smaller) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that applicant's anchor member is intended to be used with thicker blankets (the blanket or towel is not considered a positively recited element of the claimed invention), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making,

the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

September 21, 2004